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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,538	12/19/2005	Takashi Fujita	053362	9367
38834 7590 03/03/2010 WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP 1250 CONNECTICUT AVENUE, NW SUITE 700 WASHINGTON, DC 20036				
EXAMINER				
XU, XIAOYUN				
ART UNIT		PAPER NUMBER		
1797				
NOTIFICATION DATE		DELIVERY MODE		
03/03/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentmail@whda.com

### Office Action Summary

**Application No.**

10/561,538

**Applicant(s)**

FUJITA ET AL.

**Examiner**

ROBERT XU

**Art Unit**

1797

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4, 5, 7-13, 15, 16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) 8-13, 15, 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 7, 16 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 08/27/2009
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The amendment filed on 01/12/2010 has been entered and fully considered. Claim 17 is canceled. Claims 1, 4, 5, 7-13, 15, 16 and 18-20 are pending, of which Claims 8-13, 15, 18 and 19 are withdrawn from consideration and Claim 1 is amended.

### ***Response to Amendment***

2. In response to amendment, the examiner maintains rejection over the prior art established in the previous Office action.

### ***Claim Rejections – 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. **Claims 1, 4, 5, 7, 16 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over McCaffrey et al. (US 2001/0038450) (McCaffrey) in view of Ryoji (Engineering Materials, 1999, IDS with full English translation).

In regard to Claims 1 and 7, McCaffrey teaches determining amount of ATP by detecting ATP-luciferase chemi-luminescence (see paragraph [0004]). McCaffrey teaches that the photo-detecting transducers used for detecting luminescence are very sensitive to static charge; for instance, static charges seen when a sample consumable is inserted into the sample chamber (compartment) (see col. 2, paragraph [0015]). McCaffrey further teaches that conventionally, a sample chamber (compartment) of known devices must be made of a conductive material or some other means must be provide to remove static charge from the sample chamber (see paragraph [0015]). McCaffrey does not specifically teach what "some other means" are.

Ryoji teaches static elimination materials that can be used to eliminate static in an environment (see page 6-7 of the full English translation). The static elimination materials eliminate electrostatic charge in a local environment by interacting with electric charged molecules in the environment (see page 6-7 of the full English translation). At time of the invention, it would have been obvious to ordinary skill in the art to use static elimination materials to remove static electricity in the environment as

taught by Ryoji in McCaffrey's sample chamber, because McCaffrey teaches the detecting luminescence are very sensitive to static charge and other means must be provide to remove the static charges.

In regard to Claims 4, 5 and 16, Ryoji teaches prevention of product troubles by static electricity failure, removal of static electricity by using materials having a static elimination effect (see page 6-7 of the full English translation). At time of the invention, it would have been obvious to one of ordinary skill in the art to remove static electricity by materials having a static elimination effect as taught by Ryoji in McCaffrey's measurement chamber so that the static inside the chamber can be removed.

In regard to Claim 20, McCaffrey teaches calibration of the instrument (see paragraph [0052]). McCaffrey in view of Ryoji does not specifically teach using a calibration curve showing a relationship between a concentration of the objective compound and a measured value which is previously obtained by measuring a standard solution containing a known amount of the objective component. However, using a calibration curve based on a known amount of the compound is well known in the art, at the time of the invention it would have been obvious to one of ordinary skill in the art to use a calibration curve showing a relationship between a concentration of the objective compound and a measured value which is previously obtained by measuring a standard solution containing a known amount of the objective component.

### ***Response to Arguments***

5. Applicant's arguments filed 01/12/2010 have been fully considered but they are not persuasive.

Applicant's notion that anti-static tape inside the measurement chamber provides unexpected result over grounding as shown in Table 4 in the instant specification is acknowledged. However, it seems obvious in view of Ryoji's teaching. Grounding is a well known conventional way of reducing electro static. Ryoji teaches that the electrostatic elimination material is used in integrated circuit manufacturing process, to persistently eliminate electrostatic in the parts or air in the process (see page 6, lines 28-29, page 7, lines 1-3 of the full English translation). Therefore, the power of the

electrostatic elimination material must be superior to merely grounding the integrated circuit. Ryoji also teaches using electrostatic elimination material in air cleaner, to persistently eliminate electrostatic in the air cleaner (see page 7, lines 10-14 of the full English translation). Therefore the power of the electrostatic elimination material must be superior to merely grounding the air cleaner.

In response to the argument of making an atmosphere surrounding a reaction vessel or surrounding the reaction vessel in the photometry chamber electrically constant by using a material having a static electricity elimination effect, Ryoji seems provide the right material for that purpose. The material as taught by Ryoji interacts with charged molecules in its environment and eliminates electrostatic on parts or air in its environment.

Applicant submits that Novalloy E is electrically conductive material, just like aluminum. After reading the full English translation provided and cited by the applicant, Examiner respectfully disagrees. Ryoji discloses that "at present, surface resistivity of a persisting antistatic resin is generally  $10^{11} \Omega$  order, however, in order to leak static electricity generated from time to time, it is required antistatic property of a higher level of  $10^8 \Omega$  order". Surface resistivity of  $10^{11} \Omega$  order is clearly much higher than aluminum. Surface resistivity of  $10^8 \Omega$  order is also much higher than aluminum.

Applicant argues that McCaffrey discloses that "many photodetecting transducers used for the detection of luminescence are very sensitive to static charge. It is known that resin easily charges with electricity. Novalloy E disclosed in Ryoji is made of ABS resin. Therefore, one of ordinary skill in the art would not use Novalloy E which is made of resin as a material of the photometry chamber in McCaffrey". In response to the argument, First, Examiner points out that Novalloy E disclosed by Ryoji is for persistent static elimination (see page 3, lines 7-13, full English translation). Second, Ryoji I discloses that the application of the Novalloy E series is to add the material to the environment to eliminate the static in the environment, such as, in integrated circuit manufacturing process (see page 6, line 28-29, page 7, lines 1-3). In that case, Novalloy E series is not used as a material for integrated circuit. Naturally, one of ordinary skill in the art would add Novalloy E, which is for persistent static elimination, in

an environment of photometry chamber in McCaffrey for eliminating static charge in the environment, because McCaffrey discloses that many photodetecting transducers used for the detection of luminescence are very sensitive to static charge.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ROBERT XU** whose telephone number is (571)270-5560. The examiner can normally be reached on Mon-Thur 7:30am-5:00pm, Fri 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vickie Kim can be reached on (571)272-0579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

2/25/2010

/Yelena G. Gakh/  
Primary Examiner, Art Unit 1797

RX